

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JAKE BERNIER, KENNETH LEMARIER and JOSEPH  
BERNIER

Plaintiffs,

- against -

BARSTOOL SPORTS, INC.

Defendant.

Docket No. 1:19-cv-6319

JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiffs Jake Bernier (“Bernier”), Kenneth Lemarier (“Lemarier”), and Joseph Bernier (“JBernier”) and all together (“Plaintiffs”) by and through their undersigned counsel, as and for their Complaint against Defendant Barstool Sports, Inc. (“Barstool Sports” or “Defendant”) hereby alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted design called Sad Roger, owned and registered by Plaintiffs. Accordingly, Plaintiffs seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

**JURISDICTION AND VENUE**

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

### **PARTIES**

5. Bernier has a usual place of business at 10 Sargent Drive, Hooksett, NH 03106.

6. Lemarier has a usual place of business at 9 Windsor Drive, Auburn, NH 03032.

7. JBernier has a usual place of business at 1 Elm Street, Byfield, MA 01922.

8. Upon information and belief, Barstool Sports is a foreign business corporation duly organized and existing under the laws of the State of Delaware, with a place of business at 15 West 27<sup>th</sup> Street, 3<sup>rd</sup> Floor, New York, New York 10001. Upon information and belief Barstool Sports is registered with the New York Department of State Division of Corporations to do business in the State of New York.

### **STATEMENT OF FACTS**

#### **A. Background and Plaintiffs' Ownership of the Design**

9. Plaintiffs created a design called Sad Roger (the "Design"). A true and correct copy of the Design is attached hereto as Exhibit A.

10. Plaintiffs are the authors of the Design and has at all times been the sole owner of all right, title and interest in and to the Design, including the copyright thereto.

11. The Design was registered with the United States Copyright Office and was given registration number VA 2-116-015.

#### **B. Defendant's Infringing Activities**

12. Barstool Sports licensed the Design for a one-time use in 2015.

13. Without a license, Barstool Sports continued using the Design beyond the scope of the 2015 one-time usage license.

14. Barstool Sports used the Design on clothing, posters, towels, t-shirts, hoodies, coffee mugs, cooler packs, bathing suits, golf covers and billboards. See Exhibit B.

15. Barstool Sports then created derivative designs from the Design.

16. Upon information and belief, Barstool Sports partnered with retail companies like Olympia Sports to sell the merchandise with the Design in stores around the country.

17. Plaintiffs did not give permission to Barstool Sports to partner with any third parties to sell merchandise with their Design.

18. Barstool Sports did not license the Design from Plaintiffs for its continued use, nor did Barstool Sports have Plaintiffs permission or consent to publish the Design on anything beyond the initial license.

**CLAIM FOR RELIEF**  
**(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)**  
**(17 U.S.C. §§ 106, 501)**

19. Plaintiffs incorporates by reference each and every allegation contained in Paragraphs 1-18 above.

20. Barstool Sports infringed Plaintiffs copyright in the Design by reproducing and publicly displaying the Design. Barstool Sports is not, and has never been, licensed or otherwise authorized to reproduce, publicly display, distribute and/or use the Design.

21. The acts of Defendant complained of herein constitute infringement of Plaintiffs copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

22. Upon information and belief, the foregoing acts of infringement by Defendant have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiffs rights.

23. As a direct and proximate cause of the infringement by the Defendant of Plaintiffs copyright and exclusive rights under copyright, Plaintiffs is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

24. Alternatively, Plaintiffs is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Design, pursuant to 17 U.S.C. § 504(c).

25. Plaintiffs further is entitled to their attorney's fees and full costs pursuant to 17 U.S.C. § 505.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully requests judgment as follows:

1. That Defendant Barstool Sports be adjudged to have infringed upon Plaintiffs copyrights in the Design in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiffs be awarded either: a) Plaintiffs actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiffs Design; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiffs be awarded their costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
5. That Plaintiffs be awarded pre-judgment interest; and

6. Such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York  
July 8, 2019

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